

#### **§4.119**

with common carriers for carriage of mail, see §4.123(d).)

#### **§4.119 Contracts for services of communications companies.**

The Act, in paragraph (4) of section 7, exempts from its provisions “any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934.” This exemption is applicable to contracts with such companies for communication services regulated under the Communications Act. It does not exempt from the Act any contracts with such companies to furnish any other kinds of services through the use of service employees.

#### **§4.120 Contracts for public utility services.**

The Act, in paragraph (5) of section 7, exempts from its provisions “any contract for public utility services, including electric light and power, water, steam, and gas.” This exemption is applicable to contracts for such services with companies whose rates therefor are regulated under State, local, or Federal law governing operations of public utility enterprises. Contracts entered into with public utility companies to furnish services through the use of service employees, other than those subject to such rate regulation, are not exempt from the Act. Among the contracts included in the exemption would be those between Federal electric power marketing agencies and investor-owned electric utilities, Rural Electrification Administration co-operatives, municipalities and State agencies engaged in the transmission and sale of electric power and energy.

(See H. Rept. No. 948, 89th Cong., 1st sess., p. 4)

#### **§4.121 Contracts for individual services.**

The Act, in paragraph (6) of section 7, exempts from its provisions “any employment contract providing for direct services to a Federal agency by an individual or individuals.” This exemption, which applies only to an “employment contract” for “direct services,” makes it clear that the Act’s application to Federal contracts for services is in-

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tended to be limited to service contracts entered into with independent contractors. If a contract to furnish services (to be performed by a service employee as defined in the Act) provides that they will be furnished directly to the Federal agency by the individual under conditions or circumstances which will make him an employee of the agency in providing the contract service, the exemption applies and the contract will not be subject to the Act’s provisions. The exemption does not exclude from the Act any contract for services of the kind performed by service employees which is entered into with an independent contractor whose individual services will be used in performing the contract, but as noted earlier in §4.113, such a contract would be outside the general coverage of the Act if only the contractor’s individual services would be furnished and no service employee would in any event be used in its performance.

#### **§4.122 Contracts for operation of postal contract stations.**

The Act, in paragraph (7) of section 7, exempts from its provisions “any contract with the Post Office Department, [now the U.S. Postal Service], the principal purpose of which is the operation of postal contract stations.” The exemption is limited to postal service contracts having the operation of such stations as their principal purpose. A provision of the legislation which would also have exempted contracts with the U.S. Postal Service having as their principal purpose the transportation, handling, or delivery of the mails was eliminated from the bill during its consideration by the House Committee on Education and Labor (H. Rept. 948, 89th Cong., 1st sess., p. 1).

#### **§4.123 Administrative limitations, variances, tolerances, and exemptions.**

(a) *Authority of the Secretary.* Section 4(b) of the Act as amended in 1972 authorizes the Secretary to “provide such reasonable limitations” and to “make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act (other than §10), but